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C O N F I D E N T I A L SECTION 01 OF 04 KINSHASA 000425

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TAGS: [EMIN](#) [EINV](#) [ETRD](#) [ECIN](#) [CG](#)  
SUBJECT: DRC MINING SECTOR - THE MAJOR ISSUES

REF: A. 06 KINSHASA 1758  
[1](#)B. 06 KINSHASA 1082  
[1](#)C. KINSHASA 346  
[1](#)D. 06 KINSHASA 1234  
[1](#)E. 06 KINSHASA 1590

Classified By: EconOff W. Brafman for reasons 1.4 b/d.

[1](#)1. (SBU) Summary. The mining sector has traditionally been the key driver of the DRC's economy, but it will need substantial reform before it can realize its full potential. Key issues facing the sector include: 1) ensuring the transparency and fairness of existing and future mining contracts; 2) improving controls over the export of natural resources; and 3) assuring that extractive industry profits result in socio-economic benefits to the Congolese people, including thousands of artisanal miners. Few reform plans have yet been formulated or executed. End summary.

[1](#)2. (U) Reform of the extractive industries' sector is among the governance priorities of the newly-installed government. Prime Minister Gizenga's February 2007 governance contract, annexed to his government program, outlines in detail several proposed reform actions. EconOff's discussions with GDRC officials, the private sector, other diplomatic missions and NGOs indicate growing support for several of the proposals.

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Review of Mining Contracts  
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[1](#)3. (C) Transparency of mining contracts is integral to mining sector reform. Public and private discussions of this topic center on the idea that many Pre-Transition, and perhaps some Transition, contracts were overly generous to foreign mining interests and failed to comply with legal obligations, and should therefore be reviewed. Prime Minister Gizenga's governance contract specifically addresses this topic, stating that mining sector reform must include an analysis of existing partnerships, and renegotiation of agreements as necessary. Newly-installed Minister of Mines Martin Kabwelulu announced March 19 that all agreements with Gecamines should be reviewed because many companies are failing to meet their obligations, such as ceding five percent of the concessions' shares to the GDRC. Other GDRC officials concur privately that the DRC's mining contracts should be reformed. Newly-installed Minister of Defense Chikez Diemu (a former Katanga Vice Governor), for example, acknowledged to EconOff that some contracts should be reviewed, although he did not say which ones.

[1](#)4. (C) National Assembly Vice President Christopher Lutundula, chair of the Transitional Government parliamentary

commission, commonly known as the "Lutundula Commission," proposes forming an independent commission with quasi-judicial powers to examine existing contracts as well as all future agreements (reftel A). No other concrete proposals have yet publicly emerged, although the Vice Minister of Mines told EconOff March 19 that the Ministry intends to launch a review of mining contracts, possibly in cooperation with an international organization. The Vice Minister also said parliamentary review would be ill-advised because it would take too long and be too politicized.

15. (SBU) International and local NGOs, as well as some Congolese media, have taken the more extreme view that all contracts signed before and during the transition period are disadvantageous to the DRC. Congolese and international NGOs have been vocal in their opposition to joint venture agreements signed with Gecamines, the DRC's copper/cobalt mining parastatal. For example, on March 13, a consortium of international NGOs (including the U.K.'s RAID - Rights and Accountability in Development, and the Netherlands-based Fatal Transactions) released a statement calling for the GDRC to renegotiate or annul joint-venture agreements that Gecamines entered into under the Transitional Government with American company Phelps Dodge and with companies associated with Israeli Dan Gertler (Nikanor) and Belgian George Forrest (Katanga Mining).

16. (SBU) The DRC National Assembly, the UN and the World Bank (WB) have reviewed and reported on this topic, each with a different focus. The Lutundula Commission reviewed 60 pre-Transition contracts and although its report was never officially released, it was leaked and widely disseminated. The Commission concluded that many contracts were entered

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into without transparency or without following legal procedures. The UN's Group of Experts (GoE) on the Illegal Exploitation of Natural Resources has focused on the link with arms trafficking and has reported in more detail on pre-Transition deals. For example, the GoE stated in its October 2002 report that former President Laurent Kabila ceded numerous concessions to foreigners in exchange for military support, with no consideration for long-term benefits to the GDRC, and without transparently following rights' conveyance procedures.

17. (SBU) The World Bank (WB) in 2006 commissioned financial and legal reviews of contracts with Gecamines, although it has declined to make those reports public. A WB mining sector expert told EmbOffs the reviews indicate "contracts did not hugely deviate from international business practices," although he noted some did omit important terms, such as methods of accounting for revenues. However, it is not clear whether this is the WB's official position.

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Control over Natural Resources  
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18. (SBU) Another issue key to sector reform is the need to improve control over the natural resources themselves. The smuggling of millions of dollars worth of resources out of the DRC each year, well-documented by EmbOffs and international organizations such as the UN Group of Experts and British NGO Global Witness, results primarily from inadequate border control (on land, water and via air) and the illegal involvement of security services. The dysfunctional and corrupt customs system is a major facilitator of illegal exports. Until recently, exporters routinely paid customs officials to under-declare the truckloads of copper and cobalt ore they shipped into Zambia via Kasumbalesa, a major customs post in Katanga. In some regions, such as along the DRC-Ugandan border in Ituri District, a gap of several miles exists between the physical border and the customs offices, resulting in an unmonitored export zone (reftel B) that permits the smuggling of

resources such as timber and gold.

¶9. (SBU) The illicit involvement of militia not under government control and of the DRC's security services in the extractive industries sector also weakens state control over natural resources. National police, mine police, military and agents of other security services are often integral links in the illegal export chain. Often the security agents are present in the mines themselves, sometimes acting as traders, as EconOff saw in a Katanga province copper concession, and sometimes demanding payment for access to a mine (reftel D), such as in gold mines in Equateur province. Security services are also much in evidence at customs borders, demanding payments in exchange for permitting export.

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Ensuring Social Benefit  
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¶10. (U) Although extractive industries, particularly in the diamond and petroleum sectors, generate at least two-thirds of official export revenue, the general population in the DRC does not realize significant social or economic benefit from this income. This failure is, ironically, also very evident in areas of major extractive industry activity. For example, EconOffs have seen striking poverty in the DRC in Mbuji-Mayi, Eastern Kasai province, home to the DRC's diamond mining parastatal, and Moanda, Bas-Congo province, DRC-operations base for French company Perenco, which manages the only functioning in-country petroleum concessions. Many provincial and local leaders, such as former Eastern Kasai governor Dominique Kanku and current Katangan Governor Moise Katumbi, have repeatedly called for the national government to retrocede revenues it does manage to collect and to invest in key sectors such as health care and education.

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Artisanal Mining  
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¶11. (U) NGOs Global Witness and Pact Congo estimate that one million or more artisanal miners work in DRC mining sectors, most notably in gold, diamonds, copper and cobalt, and that up to twenty percent of the DRC population may indirectly

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rely on artisanal and small scale mining. Artisanal mining often creates serious human rights, environmental, educational, health and labor problems. A Nikanor official described artisanal mining communities as areas of "complete social breakdown"; other mining sector experts with whom EconOff has spoken offer similar descriptions. In its study of a gold mining community in Ituri, for example, Pact reported serious health problems, an absence of alternative employment, rampant prostitution and other indicators of economic and social instability.

¶12. (SBU) Artisanal mining can be a disincentive to mining companies to invest and operate in the DRC, because the presence of these miners on concessions creates financial, security and legal risks. For example, Australian company Anvil Mining holds mining rights to a Katanga province copper concession that thousands of artisanal miners occupy. In 2005, artisanal miners protested Anvil's attempts to remove them from its site, resulting in three deaths (reftel E). In February 2007, Anvil managers told EconOff the company is losing thousands of dollars per week due to artisans' thefts from the same concession.

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What Has Been Done  
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¶13. (SBU) Although a good deal of discussion is focused on mining sector reform, little action has yet been taken. The

WB is positioning itself to have a key role in reform efforts, having indicated its interest in doing so since at least 2005. It is nearing the end of a three-month mining sector review, lead by its chief Washington-based mining specialist. The WB designed the study to determine how to target and prioritize its funding in this area, with an eye toward reform-oriented measures.

¶14. (C) The most notable recent efforts have been in Katanga province, part of a region that is the DRC's primary source of copper, cobalt and zinc. On March 6, the recently-elected Katanga governor Moise Katumbi halted the export of unprocessed ore from the province (reftel C), and subsequently made the ban permanent. Another visible effort is a USAID-initiated Katanga program, the purpose of which is to link the private sector, the GDRC, NGOs and civil society to jointly develop priorities and plans for social development and to provide education on relevant human rights standards in mining regions. USAID is analyzing the feasibility of expanding the program into other provinces. The Extractive Industries Transparency Initiative (EITI), a British-launched effort, has not yet been put into practice in the DRC, despite the efforts of the U.K. Mission to push it forward.

¶15. (SBU) Several actors interested in mining sector reform are promoting the development of new certification or traceability regimes, similar in concept to the Kimberley Process. The UN Group of Experts and the Belgian and German Missions to the DRC are among those supporting the establishment of such regimes; the German Government, for example, advocates creating a coltan tracing process. (Comment: Diplomats at the U.K. and Canadian DRC missions have told EconOff they do not believe such schemes are feasible in the DRC and do not support their development. Even the well-established and internationally-supported Kimberley Process has had significant implementation and enforcement problems in the DRC. End comment.) Moreover, mining companies operating in DRC, such as AngloGold Ashanti, have expressed only lukewarm interest, in part because of questions about financial and administrative feasibility. The Vice Minister of Mines told EconOff that although he does not oppose such ideas, the GDRC lacks resources to implement them.

¶16. (SBU) The UN, Belgian and Canadian Missions are planning seminars on mining sector reform, following one the Belgians held in Louvain, Belgium in January. The Canadian seminar will likely focus on corporate social responsibility. The UN has not yet selected a specific topic; a UN officer responsible for organizing the seminar told EconOff the UN recognizes the symbolic importance of a high-level meeting to emphasize its continued support for sector reform. The Belgians are holding a conference on April 11 and 12 in Lubumbashi on the feasibility of developing new minerals certification and traceability regimes. The Germans are interested in organizing a similar symposium.

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Comment  
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¶17. (C) The DRC needs to focus on relatively easy-to-implement, low-cost, technologically simple reforms that have widespread donor support. The government should focus on improving border control and reforming the customs system. Such efforts, if successful, will increase state revenues and publicly demonstrate that the GDRC is serious about controlling its natural resources. Simultaneously, the GDRC should decide on a transparent and date-limited contract review process, so that it can resolve any outstanding contractual issues. Certification and traceability regimes, nice ideas at first blush, do not appear feasible. Complete sector reform in the short term is unrealistic, but some measurable progress is within reach, particularly if domestic

and international support is maintained. End comment.  
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